

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
JTH TAX LLC D/B/A LIBERTY TAX SERVICE,

Plaintiff,

-v-

JOSUE SANCHEZ D/B/A TRIPLE J, et al.,

Defendants.
----- X

22-CV-6160 (AS)

ORDER ADOPTING
REPORT AND
RECOMMENDATION

ARUN SUBRAMANIAN, United States District Judge:

This inquest into damages was referred to Magistrate Judge Cott for a Report and Recommendation. In the Report and Recommendation filed on October 16, 2023, Magistrate Judge Cott recommended that Liberty be awarded \$515,974.21 in contract damages, plus (i) prejudgment interest on that award at a rate of nine percent per annum calculated from July 20, 2022, through the date judgment is entered and (ii) post-judgment interest. Dkt. 71 at 20. Additionally, Magistrate Judge Cott recommended that Liberty be awarded \$25,549.51 (\$24,865.51 + \$684.00) for its attorneys' fees and costs. *See id.*

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). But to accept those parts of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). This clearly erroneous standard also applies when a party makes conclusory or

general objections, or simply reiterates his original arguments. *See, e.g., Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

In the present case, the Report and Recommendation advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. *See* Dkt. 71 at 20. In addition, the Report and Recommendation expressly called the parties' attention to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). *Id.* Nevertheless, as of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. Accordingly, the parties have waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga County*, 517 F.3d 601 (2d Cir. 2008).

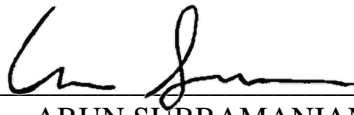
Despite the waiver, the Court has reviewed the petition and the Report and Recommendation, unguided by objections, and finds the Report and Recommendation to be well reasoned and grounded in fact and law. The Court agrees that setoff is not appropriate here. *See, e.g., RLI Ins. Co. v. King Sha Grp.*, 598 F. Supp. 2d 438, 447 (S.D.N.Y. 2009). The Court also agrees that the attorneys fee award should be reduced to account for services relating to the non-defaulting defendants. *See, e.g., Bumble & Bumble, LLC v. Pro's Choice Beauty Care, Inc.*, 2016 WL 658310, at *10 (S.D.N.Y. Feb. 17, 2016), *report and recommendation adopted*, 2016 WL 1717215 (S.D.N.Y. Apr. 27, 2016). Accordingly, the Report and Recommendation is ADOPTED

in its entirety.

The Clerk of Court is directed to enter final judgment in the amounts indicated above and close this case.

SO ORDERED.

Dated: December 27, 2023
New York, New York



ARUN SUBRAMANIAN
United States District Judge